



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष १, अंक ४२]

शनिवार, ऑक्टोबर ३, २०१५/आश्विन ११, शके १९३७

[पृष्ठे २, किंमत : रुपये ९.००

असाधारण क्रमांक ७३

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क),
जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील
इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

BEFORE THE GOVERNOR OF MAHARASHTRA

In Re . : Petition under article 192(1) of the Constitution of India by
Shri Suresh Krishnarao Patil, regarding alleged disqualification
of Shri Abu Asim Azmi, Member of the Maharashtra Legislative
Assembly under the provisions of article 191(1) (e).

Order

This is a petition under article 192 (1) of the Constitution of India filed by Shri Suresh Krishnarao Patil, seeking a declaration that Shri Abu Asim Azmi, M.L.A., has become subject to disqualification in view of the provisions of article 191 (1) (e) of the Constitution.

2. The averment in the petition is that, there were complaints against the said M.L.A. in the year 2000 under section 153, 153 -A (i) (a) and 153-A (I) (b) read with section 34 of the Indian Penal Code, for provocative speeches it is also alleged that on the basis of the complaint, J. J. Marg Police Station, Mumbai registered an FIR against the said M.L.A. being case No. 2000084/ 2000 on the 7th July 2000. It is stated that thereafter charge-sheet was filed in the matter and the said M.L.A. was sent for trial to the Court of Metropolitan Magistrate, Mazgaon, Mumbai. It is stated that the Ld. Metropolitan Magistrate, Mazgaon, who tried the case, examined the witnesses, and thereafter by his Judgment and order dated the 30th April 2012, convicted the said M.L.A. and sentenced him to suffer rigorous imprisonment for a term of two years and pay a fine of Five Thousand Rupees. It is also stated that, the said M.L.A. thereafter preferred an appeal before the Court of Sessions, Greater Mumbai, which has admitted the appeal and granted stay of operation of the Order and Judgment dated the 30th April 2012, passed by the Court of the Ld. Metropolitan Magistrate, Mazgaon.

It is contended that, as the said M.L.A. was already convicted and sentenced to suffer rigorous imprisonment for two years and pay a fine of Five Thousand Rupees, the said M.L.A. already became disqualified and in view of the judgment of the Supreme Court, dated the 10th July 2013, in the case of Lily Thomas [Writ Petition (Civil) No. 490 of 2005] and Lok Prahari through their General Secretary Shri S. N. Shukla [Writ Petition (Civil) No. 230 of 2005], his election be declared as void. It is also contended by Shri Suresh Krishnarao Patil-the petitioner that, since he has secured the next higher votes, he be declared as elected.

3. As required by the provisions of clause (2) of article 192 of the Constitution, the question of the alleged disqualification was referred to the Election Commission of India for its opinion. The Election Commission of India has submitted its opinion in the matter.

4. The Commission pointed out that the preliminary issue to be considered is whether the question of alleged disqualification raised by the Petitioner, can be entertained under article 192 (1) of the Constitution. The Commission pointed out that it is well settled that under article 192 (1) of the Constitution of India, the jurisdiction of the Governor to decide the question of disqualification of a sitting member of the State Legislative Assembly arises only in respect of disqualifications incurred after the election as a member of the Assembly. The Commission has also pointed out that the jurisdiction of the Election Commission to inquire into such question of alleged disqualification, on being referred to by the Governor under article 192 (1) of the Constitution, also arises only in case of post-election disqualification.

5. The Commission referred to the decision of the Supreme Court in the case of Election Commission Vs. Saka Venkata Rao (AIR 1953 SC 201); Brundaban Naik Vs. Election Commission (AIR 1965 SC 1892); Election Commission Vs. N. G. Ranga (AIR 1978 SC 1609) and observed that, any question of pre- election disqualification, i.e., disqualification from which a person was suffering at the time of, or prior to, his election, can be raised by means of an election petition presented in accordance with the provisions of article 329 (b) of the Constitution read with Part VI of the Representation of the People Act, 1951 and not under article 192 (1) of the Constitution.

The Commission has pointed out that, the said M.L.A. was elected as a member of the State Legislative Assembly from 171-Mankhurd-Shivajinagar Assembly Constituency on 19th October 2014, whereas the Order of conviction of the Ld. Metropolitan Magistrate, Mazgaon Court, Mumbai convicting and sentencing the said M.L.A. has been passed on 30th April 2012, i.e. much prior to the date of his election as a Member of the State Legislative Assembly. The Commission pointed out that the law laid down by the Supreme Court in the case of Saka Venkata Rao (supra) is squarely applicable to the case at hand.

The Election Commission has pointed out that in view of the well settled constitutional position, the question of alleged disqualification of the said M.L.A., being a case of pre-election disqualification, if at all any disqualification is attracted, the same cannot be raised before the Governor under article 192 (1) of the Constitution. The Commission has also pointed out that the Election Commission has no jurisdiction to express any opinion on the question of such alleged pre-election disqualification. The Commission has opined that, from the facts stated in the petition, the alleged disqualification was apparently incurred, if at all, prior to the filing of nomination of the said M.L.A. at the election held in September-October 2014. The Commission has, therefore, opined that the present petition is not maintainable before the Governor in terms of article 192 (1) of the Constitution.

6. Incidentally, the Commission has pointed out from the record of the Commission that the petitioner has filed an Election Petition (E.P. No. 10 of 2014-Suresh Krishnarao Patil Vs. Abu Asim Azmi) before the Bombay High Court, challenging the election of the said M.L.A., which is pending in the Hon'ble High Court.

7. The Commission has, therefore, returned the reference of the alleged disqualification of the said M.L.A., with its opinion that the said petition is not maintainable under article 192 (1) of the Constitution.

8. In conformity with the said opinion. I pass the following order :—

Order

The petition of Shri Suresh Krishnarao Patil, Govandi, Mumbai is hereby, for the reasons stated above, dismissed, being not maintainable under article 192 (1) of the Constitution of India.

Dated the 20th September 2015.

CH. VIDYASAGAR RAO,
Governor of Maharashtra.

क्रमांक अेपीटी. २०१५/प्र.क्र. ५५९/१५/३३

सामान्य प्रशासन विभाग

मादाम कामा मार्ग, हुतात्मा राजगुरू चौक,
मंत्रालय विस्तार, मुंबई ४०० ०३२,
दिनांक ३ ऑक्टोबर २०१५.

प्रत माहितीसाठी व उचित कार्यवाहीसाठी अग्रेषित :-

- (१) प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय, विधान भवन, मुंबई
- (२) जिल्हाधिकारी व जिल्हा निवडणूक अधिकारी, मुंबई शहर/मुंबई उपनगर
- (३) निवडनस्ती.

कल्याणी निंबाळकर,

अवर सचिव व उप मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.